Division Bench

(3)

CP 1301

IN THE HIGH COURT OF JUDICATURE AT BILASPUR

WRIT PETITION NO. 2861 OF 2005

PETITIONER Dwarika Prasad Pandey, son of Shri Jagganath Pandey, aged about 48 years, resident of Fafadih Chowk, Jail Road, Raipur.

VS

RESPONDENTS

1. State of Chhattisgarh, through the Secretary, Ministry of Law and Legislative Affairs, Mantralaya, D.K.S. Bhawan, Raipur (C.G.)

2. The Raipur Municipal Corporation, a body corporate constituted under the relevant provisions of C.G. Municipal Corporation Act, through the Commissioner, Municipal Corporation, Malviya Road, Raipur.

3. R.D.A., Through: Chief Executive Officer, G.E. Road, Raipur, District Raipur (C.G.)

P.R. No. 3023/05
Presented by Shri V. Pandey
dated

RECEIVED COPY
CLERK to A.G. BILASPUR
04/07/05

WRIT PETITION UNDER ARTICLE 226 & 227 OF THE CONSTITUTION OF INDIA.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक W.P.No. 2861/2005 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

DIVISION BENCH:

HON'BLE SHRI A.K. PATNAIK, CJ
& HON'BLE SHRI SUNIL KUMAR SINHA, J.

06.07.2005:

Heard Mr. Manoj Paranjape, learned counsel for the petitioner, Mr. V.V.S. Murhty, learned Dy. Advocate General for the State of Chhattisgarh and Mr. Pankaj Agrawal, learned counsel for the Municipal Corporation, Raipur/respondent No.2.

The petitioner has constructed a small hotel and a cabin at Raipur in Patwari Halka No.108. The petitioner's case is that the aforesaid construction was made after the Raipur Municipal Corporation granted no objection certificate for construction of the building by order dated 30-11-1994 and yet the Raipur Municipal Corporation initiated a proceeding for removal of the aforesaid construction made by the petitioner. The petitioner filed Civil Suit No.74-A of 1997 in the Court of Fifth Civil Judge Class-II, Raipur against the Raipur Municipal Corporation and alongwith the said suit he also filed an application fo temporary injunction. Learned Civil Judge after hearing the parties passed an order dated 05-11-1997 granting injunction in favour of the petitioner against the Raipur Municipal Corporation. The Raipur Municipal Corporation, however, has filed an application under Order 7 Rule 11 of the Code of Civil Procedure for rejection of the plaint of the petitioner on the ground that before filing the suit no notice has been served on the Municipal Corporation by the petitioner under Section 401 of the Madhya Pradesh Municipal Corporation Act 1956 renamed after adaptation by the State of

78 — 9/2006 —50,000.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक W.P. No 2861/2005 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Chhattisgarh as Chhattisgarh Municipal Corporation Act, 1956 (hereinafter referred to as "the Act"). The petitioner apprehends that his suit may be dismissed by the Civil Judge on the ground that no such notice has been served by the petitioner on the Municipal Corporation. The petitioner has, therefore, filed this writ petition praying for declaring the provisions of Section 401 of the Act as ultra vires on the ground that the said provisions do not make any exception when an urgent relief is claimed in the suit against the Municipal Corporation.

In the order dated 20-06-2005 passed in Writ Petition No.1234 of 2005 (Mangilal Pagaria Vs. State of Chhattisgarh and another) we have held that two parallel proceedings in respect of the same cause of action cannot be maintained by the petitioner by way of a civil suit before the Civil Court and by way of a writ petition before this Court and that the petitioner can always challenge the vires of Section 401 of the Act in the suit. We have further held in the said order dated 20-06-2005 that Section 9 of the Code of Civil Procedure 1908 provides that the Courts shall (subject to the provisions contained in the said Code) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred and no provision of law and no provision of the Constitution has been brought to the notice of the Court by which a suit declaring a provision of an Act as ultra vires is either expressly or impliedly barred. In the said order dated 20-06-2005, however, we have directed that in case the suit of the petitioner in that case is dismissed on the ground that the provisions of Section 401 of the Act have not been complied with by the petitioner before filing a suit,

S/78 — 9/2006 —50,000.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक W.P.No. 1861/2005 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —3—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

fifteen days' time will be granted to the petitioner by the Raipur Municipal Corporation to enable the petitioner to file an appeal before the appellate Court and to move an application for interim orders.

In the result, we dispose of this writ petition with the direction that it will be open to the petitioner to challenge the vires of Section 401 of the Act in the suit filed by the petitioner before the Civil Court at Raipur and in case the suit of the petitioner is dismissed, a period of fifteen days will be allowed by the Municipal Corporation, Raipur to file an appeal before the appellate Court and move an application for interim orders. We make it clear that we have not expressed any opinion on the merits of the case of any of the parties and the trial Court and the appellate Court will decide the questions raised before them by the parties on their own merits in accordance with law.

Sd/-
Chief Justice

Sd/-
Sunil Kumar Sinha
Judge

GKPRJ—FS/78—9/2006—50,000.